**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 11854 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**KUTCHH VIKAS TRUST - Petitioner(s)**
**Versus**
**CHARITY COMMISSIONER & 2 - Respondent(s)**

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**Appearance :**
MR MANOJ POPAT FOR MR RA MISHRA for Petitioner(s) : 1,
MR DHAVAL M BAROT for Respondent(s) : 1 - 3.

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 25/07/2006**

**ORAL JUDGMENT**

1. Rule. Learned advocate Shri Barot wavies service of rule on behalf of respondents. At the joint request made by learned advocates appearing for

the parties, the petition is taken up for final disposal.

2. This petition arises out of an order dated 5th May, 2006 passed by the Joint Charity Commissioner, Rajkot. By the said order the Joint Charity Commissioner was pleased to require the Dy. Charity Commissioner to hold an inquiry afresh regarding the allegations made against the petitioner with respect to certain purchases made, the report is to be submitted within a period of six months.

3. Earlier when the Joint Charity Commissioner had undertaken the inquiry in Inquiry Case No. 1/2002 u/s 40 and 41 of the Bombay Public Trust Act, the petitioner had approached this Court by filing SCA No. 15856/04. Learned advocate for the petitioner had stated before the Court that if the Joint Charity Commissioner is holding inquiry within least possible time avoiding harassment to the petitioner trust and without asking for more details except those which are relevant the petitioner trust would have no objection. The learned Judge, therefore, by order

dated 16/9/2005 without going into the merits of the case directed the Joint Charity Commissioner to complete the inquiry against the petitioner as early as possible and preferably before 7th November, 2005. Certain other observations were made by the learned Judge in his order. Pursuant to the order dated 16/9/2005 though the Joint Charity Commissioner could not complete the inquiry by 7th November, 2005 eventually he passed the impugned order on 5th May, 2005. Instead of completing the inquiry the Joint Charity Commissioner in turn remanded the proceedings before the Dy. Charity Commissioner to hold an inquiry afresh and to submit his report within six months.

4. This Court had taken note of the contention of the petitioner that there is already a report of the Dy. Commissioner in which findings were in favour of the petitioner trust and that the proceedings initiated by the Joint Charity Commissioner should not put the petitioner trust to harassment. Considering all these aspects of the matter, this Court had permitted certain time frame for completion

of the proceedings by the Joint Charity Commissioner. In that view of the order passed by this Court, I find that it was open for the Joint Charity Commissioner to remand the proceedings further to the Dy. Charity Commissioner for making a report within six months. The order passed by the Joint Charity Commissioner itself was long after the dead line laid by this Court was over. Thereafter to further permit six more months to Dy. Charity Commissioner to make a report, in my view was not envisaged in the order that the Court passed in the earlier round of litigation. In that view of the matter the impugned order is required to be quashed. Despite setting aside the order, it will be open for the Joint Charity Commissioner himself to complete the proceedings expeditiously and in any case not more than four months from the date of receipt of a copy of this order. It is always open for the said authority to call for necessary material to enable him to come to just conclusion. For this purpose alone remand would not be justified that too giving as long as six months period for preparation of the fresh report.

5. Since the present proceedings arose out of an earlier round of litigation, in facts of the case the objection regarding availability of alternative remedy would not be available to the petitioner.

6. In the result petition is allowed. Impugned order dated 5th May, 2005 passed by the Joint Charity Commissioner is quashed subject to above observations. Rule is made absolute.

(Akil Kureshi, J.)

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